

Message Text

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67

ACTION EUR-12

INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-03 H-01 INR-07 L-02

NSAE-00 NSC-05 PA-01 RSC-01 PRS-01 SP-02 SS-15

USIA-06 AID-05 COME-00 EB-07 FRB-01 TRSE-00 XMB-02

OPIC-03 CIEP-01 LAB-04 SIL-01 OMB-01 STR-01 AF-06

ARA-06 EA-06 NEA-09 /110 W

----- 098027

R 082202Z JAN 75

FM AMEMBASSY OTTAWA

TO SECSTATE WASHDC 5346

INFO AMCONSUL MONTREAL

AMCONSUL TORONTO

AMCONSUL VANCOUVER

C O N F I D E N T I A L OTTAWA 0058

E.O. 11652: GDS

TAGS: ESTC, CA, CU

SUBJ: CHANGE IN ADMINISTRATION OF ITEM 9001 OF CANADA'S
EXPORT CONTROL LIST

1. DEPARTMENT OF INDUSTRY, TRADE AND COMMERCE (ITC)
OFFICIALS, REFERRING TO PRIME MINISTER TRUDEAU'S/PRESIDENT
FORD'S DEC 4 UNDERTAKING TO CONSULT MORE ASSIDUOUSLY
ON ACTIONS AFFECTING OTHER COUNTRY'S INTERESTS, YESTERDAY
PROVIDED ECONOMIC AND COMMERCIAL COUNSELORS, ON CONFIDENTIAL
BASIS, WITH TEXT OF EXPORT AND IMPORT PERMITS DIVISION
DIRECTIVE NO. 7, EFFECTIVE DECEMBER 23, 1974, CONCERNING
ADMINISTRATION OF ITEM 9001 OF CANADA'S EXPORT CONTROL
LIST. ITC OFFICIALS (KELLY, DIRECTOR, USA DIVISION AND
EVANS, CHIEF, EXPORT AND IMPORT PERMITS DIVISION)
EMPHASIZED THIS WAS AN INTERNAL DIRECTIVE WHICH THEY
WILL NOT PUBLISH BUT WHICH THEY WANTED USG PARTIES
CONCERNED TO BE FULLY AWARE OF IN ALL ITS IMPLICATIONS.
(ITC OFFICIALS ACKNOWLEDGED THAT SUBSTANCE OF DIRECTIVE
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WOULD EVENTUALLY BECOME KNOWN AMONG CANADIAN EXPORTERS,

BUT EMPHASIZED THAT TEXT IS LABELED CONFIDENTIAL AND FOR INTERNAL USE ONLY. THEY ASKED THAT WE HANDLE IT WITH DISCRETION). TEXT OF DIRECTIVE NO. 7 FOLLOWS:

2. BEGIN VERBATIM TEXT.

(1) ALL GOODS OF UNITED STATES ORIGIN WITHIN THE MEANING OF ITEM 9001 OF THE EXPORT CONTROL LIST REQUEST AN EXPORT PERMIT PRIOR TO EXPORT-ACTION FROM CANADA TO ANY DESTINATION EXCEPT THE UNITED STATES.

(2) ANY PARTS OF COMPONENTS OF UNITED STATES ORIGIN WHICH ARE SUBSTANTIALLY CHANGED IN FORM, VALUE OR USE, OR WHICH ARE INCORPORATED IN THE MANUFACTURE OR PRODUCTION OF NEW GOODS OUTSIDE THE UNITED STATES, ARE CONSIDERED TO FALL OUTSIDE THE DEFINITION OF ITEM 9001.

(3) WHEN THE EXPORT OF UNITED STATES ORIGIN GOODS NOT ELSEWHERE DESCRIBED IN THE EXPORT CONTROL LIST IS FOR THE PURPOSE OF SERVICING CANADIAN MANUFACTURED GOODS PREVIOUSLY EXPORTED FROM CANADA TO ANY DESTINATION EXCEPT THE UNITED STATES, FAVOURABLE CONSIDERATION IS TO BE GIVEN TO EXPORT PERMIT APPLICATIONS THEREFOR.

(4) CANADIAN EXPORTERS, IN MAKING APPLICATION TO EXPORT UNITED STATES ORIGIN GOODS, AS DESCRIBED IN SUB-PARAGRAPH 3 ABOVE, MAY BE REQUIRED TO PROVIDE EVIDENCE THAT THE GOODS TO BE SERVIED WERE MANUFACTURED IN AN EXPORTED FROM CANADA. THIS REQUIREMENTS IS TO BE OBSERVED IN ALL CASES INVOLVING THE SHIPMENT OF SUCH GOODS TO CUBA.

(5) CONSULTATION WITH THE UNITED STATES AUTHORITIES WILL CONTINUE TO TAKE PLACE FOR GOODS CONTROLLED SOLELY BY REASON OF ITEM 9001
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OF THE EXPORT CONTROL LIST AND WHICH ARE DESTINED FOR SHIPMENT TO A COUNTRY NAMED IN THE AREA CONTROL LIST IN CASES WHERE THE UNITED STATES AUTHORITIES THEMSELVES REQUIRE A VALIDATED LICENSE FOR SUCH EXPORTS.

END VERBATIM TEXT.

3. FOR CONVENIENCE OF WASHINGTON AGENCIES, TEXT
OF ITEM 9001 FOLLOWS:

BEGIN VERBATIM TEXT.

ALL GOODS ORIGINATING IN THE UNITED STATES,
WHETHER IN BOND OR CLEARED BY CANADIAN CUSTOMS,
EXCEPT ANY SUCH GOODS THAT HAVE BEEN FURTHER
PROCESSED OR MANUFACTURED OUTSIDE THE UNITED
STATES, BY COMING THEM WITH OTHER GOODS OR
OTHERWISE, SO AS TO RESULT IN A SUBSTANTIAL
CHANGE IN VALUE, FORM AND USE OF THE GOODS OR
IN THE PRODUCTION OF NEW GOODS, UNLESS THE
GOODS TO BE XPORTED ARE LISTED IN ANOTHER
GROUP IN THIS LIST.

END VERBATIM TEXT.

4. "AREA CONTROL LIST", CITED IN PARA 5 ABOVE OF
DIRECTIVE NO. 7, EMBRACES: ALBANIA, BULGARIA,
CZECHOSLOVAKIA, EAST GERMANY AND EAST BERLIN, HUNGARY,
MONGOLIA, NORTH KOREA, NORTH VIETNAM, PEOPLE'S REPUBLIC
OF CHINA, POLAND, RHODESIA, ROMANIA AND UNION OF SOVIET
SOCIALIST REPUBLICS.

5. PARAGRAPHS 2 AND 3 OF DIRECTIVE NO. 7 WILL BE OF
PARTICULAR INTEREST TO U.S. EXPORT CONTROL AUTHORITIES.
ACCORDING TO ITC OFFICIALS, PARAGRAPH 2 STEMS FROM
RECENT INTERNAL GOC LEGAL OPINION THAT INCORPORATION
OF U.S.- ORIGIN GOODS IN NEW GOODS MANUFACTURED OR
PRODUCED IN CANADA MEETS THE CRITERION "FURTHER
PROCESSED" SET FORTH IN ITEM 9001. PREVIOUSLY "FURTHER
PROCESSED" HAD BEEN INTERPRETED TO REQUIRE SOME FORM
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OF REFINEMENT OR MANIPULATION OF THE U.S.-ORIGIN GOODS
IN CANADA, BUT LEGAL EXPERTS OF INTERESTED AGENCIES
ARE UNANIMOUS IN VIEW THAT THIS INTERPRETATION OF
ITEM 9001 WAS TOO RESTRICTIVE. HERETOFORE, GOODS IN
WHICH ANY U.S.-ORIGIN GOODS WERE MERELY INCORPORATED
AND WHICH WERE DESTINED FOR CUBA (OR OTHER AREAS
PROSCRIBED BY U.S.) REQUIRED VALIDATED EXPORT PERMIT
AND, ACCORDING TO EVANS, PERMIT WOULD NOT RPT NOT
HAVE BEEN ISSUED UNLESS, AFTER CONSULTATION BETWEEN
ITC AND USDOC, USDOC CONCURRED. NOW, IF IN
EXPORTER'S JUDGMENT, U.S.-ORIGIN GOODS HAVE LOST THEIR
IDENTITY WITHIN THE REVISED MEANING OF ITEM 9001,
EXPORTER NEED NOT APPLY FOR EXPORT PERMIT BUT CAN
FREELY SHIP GOODS. IN RESPONSE TO EMBOFFS QUESTIONS
AND TO ILLUSTRATE, ITC OFFICIALS SAID THAT, ON BASIS

OF INFORMATION PROVIDED ITC BY MLW MONTREAL AS TO EXTENT AND NATURE OF U.S.-ORIGIN COMPONENTS BEING INCORPORATED IN DIESEL LOCOMOTIVES FOR CUBA, ITC CONCURS IN MLW'S JUDGMENT THAT MLW NEED NOT, RPT NOT, APPLY FOR EXPORT PERMIT COVERING EVENTUAL SHIPMENT OF LCOMOTIVES. (THEY COMMENTED, HOWEVER, THAT, GIVEN FACTS OF THIS CASE, SAME CONCLUSION WOULD PROBABLY HAVE BEEN REACHED UNDER PREVIOUS INTERPRETATION).

6. INFORMAL DISCUSSION OF BACKGROUND THESE CHANGES WITH ITC OFFICIALS ELICITED PERSONAL COMMENTS FROM THEM THAT AMONG FACTORS INFLUENCING GOC THINKING ON CUBAN TRADE ISSUES ARE:

- (A) SENSITIVITY OF CANADIANS ABOUT CONTROL OVER THEIR OWN PRODUCTION AND FOREIGN TRADE;
- (B) KNOWLEDGE THAT CANADA HAS EXERCISED MUCH TIGHTER CONTROL OVER U.S.-ORIGIN ITEMS THAN ANY OTHER COUNTRY. (HOW, EVANS ASKED RETROICALLY, HAS IT BEEN POSSIBLE FOR USG TO PREVENT NON-STRATEGIC EXPORTS UNDER OPEN GENERAL LICENSE TO, SAY, THE UK FROM BEING INCORPORATED IN OTHER GOODS OF UK MANUFACTURE OR ASSEMBLY DESTINED FOR SHIPMENT TO CUBA?); AND

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- (C) BELIEF OF SOME SENIOR OFFICIALS THAT ADVANCE BY CANADA MIGHT HELPFULLY NUDGE USG IN ITS CONTINUING REVIEW OF POLICY TOWARDS CUBA. (EMBOFFS THREW COPIOUS AMOUNTS OF COLD WATER ON THIS SUGGESTION). PORTER

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Message Attributes

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Draft Date: 08 JAN 1975
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Disposition Authority: GolinoFR
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